

**STATE JUDICIAL NOMINATION COMMISSION  
AND OFFICE OF THE GOVERNOR  
JOINT JUDICIAL APPLICATION**

*Please complete this application by placing your responses in normal type, immediately beneath each request for information. Requested documents should be attached at the end of the application or in separate PDF files, clearly identifying the numbered request to which each document is responsive. Completed applications are public records. If you cannot fully respond to a question without disclosing information that is confidential under state or federal law, please submit that portion of your answer separately, along with your legal basis for considering the information confidential. Do not submit opinions or other writing samples containing confidential information unless you are able to appropriately redact the document to avoid disclosing the identity of the parties or other confidential information.*

**PERSONAL INFORMATION**

- 1. State your full name.**

Theresa Renee Wilson

- 2. State your current occupation or title. (Lawyers: identify name of firm, organization, or government agency; judicial officers: identify title and judicial election district.)**

Assistant Appellate Defender, Office of the State Appellate Defender

- 3. State your date of birth (to determine statutory eligibility).**

January 25, 1973

- 4. State your current city and county of residence.**

Des Moines, Polk County

**PROFESSIONAL AND EDUCATIONAL HISTORY**

- 5. List in reverse chronological order each college and law school you attended including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.**

M.A. in Political Science, Iowa State University, Aug. 1996 – Aug. 1998

J.D. in Law, with honors, Drake University, Aug. 1995 – May 1998

Special Student, Political Science, Iowa State University, Aug. 1995 – May 1996  
Independent study transitioning to graduate program with foreign policy and international relations focus

B.A. in Journalism & Political Science, with distinction, Iowa State University, Aug. 1991 – May 1995

**6. Describe in reverse chronological order all of your work experience since graduating from college, including:**

- a. Your position, dates (beginning and end) of your employment, addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the name of your supervisor or a knowledgeable colleague if possible.**

Assistant Appellate Defender, Office of the State Appellate Defender, 4<sup>th</sup> Floor Lucas Building, Des Moines, IA 50319, Mar. 2001 – present  
Former supervisors - Mark Smith and Linda Del Gallo  
Current supervisor – Martha Lucey

Assistant Public Defender, Office of the State Public Defender, 507 7th Street, Suite 300, Sioux City, IA 51101, Jan. 2000 – Feb. 2001  
Former supervisor – Greg Jones  
Knowledgeable colleague – Jennifer Solberg

Legal Assistant, District Court Administration, 3rd Judicial District, Woodbury County Courthouse, 620 Douglas Street, Sioux City, IA 51101, Aug. 1998 – Jan. 2000  
Former supervisor – Leesa McNeil  
Knowledgeable colleague – John Lundquist

- b. Your periods of military service, if any, including active duty, reserves or other status. Give the date, branch of service, your rank or rating, and present status or discharge status.**

None

**7. List the dates you were admitted to the bar of any state and any lapses or terminations of membership. Please explain the reason for any lapse or termination of membership.**

United States Supreme Court Bar Member, June 9, 2003

Iowa State Bar Member, Sept. 21, 1998

**8. Describe the general character of your legal experience, dividing it into periods with dates if its character has changed over the years, including:**

- a. A description of your typical clients and the areas of the law in which you have focused, including the approximate percentage of time spent in each area of practice.**

As an assistant appellate defender since 2001, I handle criminal and postconviction appeals for indigent clients. I estimate 85 percent of my cases have been direct appeals from criminal proceedings, and 15 percent have been direct appeals from denials of postconviction relief. Postconviction matters are considered civil proceedings.

As an assistant public defender in the Sioux City Adult Public Defender Office from January 2000 until March 2001, I handled criminal proceedings for indigent clients in both misdemeanor and low-level felony cases. I also handled a few probation revocation and parole revocation hearings,

- b. The approximate percentage of your practice that has been in areas other than appearance before courts or other tribunals and a description of the nature of that practice.**

As both an assistant appellate defender and an assistant public defender, my entire practice has involved appearances before courts. As an assistant appellate defender, I brief and argue cases before the Iowa Court of Appeals, the Iowa Supreme Court, and the United States Supreme Court. As an assistant public defender, I handled misdemeanor and low-level felony cases either at trial or through a guilty plea in the District Court. I also represented clients at probation revocation and parole revocation proceedings in the District Court.

- c. The approximate percentage of your practice that involved litigation in court or other tribunals.**

My entire practice has involved litigation before Iowa's district courts, Iowa's appellate courts, and the United States Supreme Court.

- d. The approximate percentage of your litigation that was: Administrative, Civil, and Criminal.**

As an assistant appellate defender, I estimate 85 percent of my litigation is criminal in nature and 15 percent is civil in nature.

As an assistant public defender, all of my litigation would have been criminal in nature.

- e. **The approximate number of cases or contested matters you tried (rather than settled) in the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel, and whether the matter was tried to a jury or directly to the court or other tribunal. If desired, you may also provide separate data for experience beyond the last 10 years.**

Because I have been doing appellate work for the last 18 years, I have not had to try any contested matters before the district courts.

During my year as an assistant public defender in Sioux City, I handled primarily misdemeanors and class D felonies. I believe I had fewer than 10 bench trials, as most of my cases settled by agreement. I would have been sole counsel in these cases.

- f. **The approximate number of appeals in which you participated within the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel. If desired, you may also provide separate data for experience beyond the last 10 years.**

According to the Iowa Courts Information Service, my name appears as counsel of record in more than 2,000 appeals. A cursory Westlaw search found 393 appellate decisions listing me as counsel of record. The discrepancy between the two figures may be due to voluntary dismissals and withdrawals, including Appellate Rule 6.1005 motions. I would have been sole counsel in the vast majority of cases these case. On several occasions, I may have argued a case briefed by another assistant appellate defender.

**9. Describe your pro bono work over at least the past 10 years, including:**

- a. **Approximate number of pro bono cases you've handled.**
- b. **Average number of hours of pro bono service per year.**
- c. **Types of pro bono cases.**

I have not handled any pro bono cases during my tenure with the State Public Defender system. In lieu of providing pro bono services, I contribute financially to Iowa Legal Aid.

**10. If you have ever held judicial office or served in a quasi-judicial position:**

- a. **Describe the details, including the title of the position, the courts or other tribunals involved, the method of selection, the periods of service, and a description of the jurisdiction of each of court or tribunal.**

I served in a quasi-judicial position as a member of the Iowa Supreme Court's Grievance Commission from August 2005 to January 2014. I was nominated by then-State Public Defender Tom Becker and was appointed to the Commission by the Iowa Supreme Court. Members of the Commission serve on

five-person panels, called Divisions, and hear cases involving claims of ethical violations by attorneys. The Division then issues its findings of fact, conclusions of law, and recommendation in the case. The opinion is filed with the Iowa Supreme Court Clerk. The Iowa Supreme Court then conducts a de novo review of the case and issues a final opinion.

- b. List any cases in which your decision was reversed by a court or other reviewing entity. For each case, include a citation for your reversed opinion and the reviewing entity's or court's opinion and attach a copy of each opinion.**

To the best of my recollection, I drafted three opinions as Division President during my tenure on the Commission. The only opinion I issued that was reversed in part was Iowa Supreme Court Attorney Disciplinary Board v. Mark A. Templeton, Docket No. 687 (Feb. 12, 2010). The Iowa Supreme Court overturned previous case law as to when criminal conduct would be considered conduct prejudicial to the administration of justice in violation of Iowa Rule of Professional Conduct 32:8.4(d). Iowa Supreme Court Attorney Disciplinary Board v. Mark A. Templeton, 784 N.W.2d 761 (Iowa 2010).

- c. List any case in which you wrote a significant opinion on federal or state constitutional issues. For each case, include a citation for your opinion and any reviewing entity's or court's opinion and attach a copy of each opinion.**

As a member of the Grievance Commission, I did not write any significant opinions involving constitutional issues.

**11. If you have been subject to the reporting requirements of Court Rule 22.10:**

- a. State the number of times you have failed to file timely rule 22.10 reports.**
- b. State the number of matters, along with an explanation of the delay, that you have taken under advisement for longer than:**
- i. 120 days.**
  - ii. 180 days.**
  - iii. 240 days.**
  - iv. One year.**

I am not subject to the reporting requirements of Court Rule 22.10.

**12. Describe at least three of the most significant legal matters in which you have participated as an attorney or presided over as a judge or other impartial decision**

**maker. If they were litigated matters, give the citation if available. For each matter please state the following:**

- a. Title of the case and venue,**
- b. A brief summary of the substance of each matter,**
- c. A succinct statement of what you believe to be the significance of it,**
- d. The name of the party you represented, if applicable,**
- e. The nature of your participation in the case,**
- f. Dates of your involvement,**
- g. The outcome of the case,**
- h. Name(s) and address(es) [city, state] of co-counsel (if any),**
- i. Name(s) of counsel for opposing parties in the case, and**
- j. Name of the judge before whom you tried the case, if applicable.**

State v. Graves, 668 N.W.2d 860 (Iowa 2003)

I represented Deon Graves from July 2002 to September 2003 on the direct appeal from his convictions for manufacturing and possessing marijuana. I claimed trial counsel ineffective for failing to object to various incidents of prosecutorial misconduct. Richard Bennett, an Assistant Attorney General with the Iowa Attorney General's Criminal Appeals Division in Des Moines, was counsel for the State on appeal.

In a matter of first impression, the Iowa Supreme Court held a prosecutor may not ask a defendant to comment on the veracity of another witness, including whether a police officer made up testimony. The Court also held it was improper for a prosecutor to argue in closing that that defendant lied or that he called a police officer a liar. The prosecutor's misconduct violated Graves' due process rights and Graves' trial counsel was ineffective for failing to object to the misconduct.

The Court's ruling was a significant departure from past cases in which the Court expressed its dissatisfaction with such practices but declined to reverse defendants' convictions. The Graves decision had a substantial impact on prosecutor conduct and left the evaluation of the credibility of witnesses in the hands of jurors.

State v. Tovar, 656 N.W.2d 112 (Iowa 2003), reversed by Iowa v. Tovar, 541 U.S. 77 (2004)

I represented Felipe Tovar from October 2001 to March 2004 on the appeal of his Operating While Intoxicated – 3<sup>rd</sup> Offense and Driving While Barred convictions. I challenged the use of his first OWI conviction for enhancement purposes because it was an uncounseled guilty plea without a valid waiver of the right to counsel. Darrel Mullins, an Assistant Attorney General with the Iowa Attorney General's Criminal Appeals Division in Des Moines, was counsel for the State on appeal.

I won in the Iowa Supreme Court. The Court created a three-part inquiry for determining whether a criminal defendant knowingly and voluntarily waived his right to counsel with respect to a guilty plea. This was a significant development in the law relating to waiver of the right to counsel as it related to guilty pleas.

The State petitioned for certiorari to the United States Court because the Iowa Supreme Court's ruling relied upon the Sixth Amendment to the United States Constitution and not the corollary provision of the Iowa Constitution. I filed a Brief in

Opposition, but the Supreme Court granted certiorari. I filed a brief on the merits in support of the Iowa Supreme Court's decision and argued the case before the United States Supreme Court on January 21, 2004. The United States Supreme Court reversed the decision of the Iowa Supreme Court on March 8, 2004.

Bonilla v. State, 791 N.W.2d 697 (Iowa 2010)

I represented Julio Bonilla from July 2009 to February 2011 on his appeal from the denial of his application for postconviction relief. I claimed his mandatory sentence of life imprisonment without parole was cruel and unusual punishment under the Iowa Constitution and the United States Constitution based on his status as a juvenile at the time of his kidnapping offense. Thomas Andrews, an Assistant Attorney General with the Iowa Attorney General's Criminal Appeals Division in Des Moines, was counsel for the State on appeal.

I filed my brief in Bonilla knowing the same issue was pending in the United States Supreme Court in Graham v. Florida but not knowing how that Court might rule. This is why I raised the issue separately under the Iowa Constitution. Once the Graham decision was issued and established a constitutional prohibition on mandatory life sentences without the possibility of parole for juveniles convicted in non-homicide cases, the Iowa Supreme Court ruled in Bonilla's favor. The federal judge who later considered Bonilla's application for habeas relief stated that I had obtained "historic relief" for my client.

Bonilla was granted the "potential" for parole. Iowa Supreme Court cases since Bonilla have attempted to articulate the standard by which juvenile offenders must be considered for parole release.

**13. Describe how your non-litigation legal experience, if any, would enhance your ability to serve as a judge.**

As a member of the Iowa State Bar Association's Jury Instructions Committee, it is my responsibility to examine new cases handed down by the Iowa Supreme Court and newly enacted statutes to determine how those changes impact the way in which our trial courts should instruct their juries. The focus is on accurately communicating the current state of the applicable law for use at the trial level. In doing so, it is incumbent upon committee members to listen to other members' alternative interpretations of the law. This is a necessary skill for serving on the Iowa Supreme Court, as the Court often has to weigh various interpretations of law and determine which interpretation best represents the purpose of the law. The Jury Instructions Committee has also given me exposure to areas of law outside of the criminal context.

As a member and former chair of the Iowa State Bar Association's Criminal Law Section Council, I collaborated with both criminal defense attorneys and prosecutors in shaping the legislative priorities for the section. As one can imagine, the two groups do not always see eye to eye on legislative proposals. I strived to address other members' differing viewpoints with respectful consideration while responding to the merits of their arguments. During my tenure on the Council, we were successful in having a number of our proposals enacted into law. My experience with the criminal law section shows I am

capable of amicably working with people who have differing viewpoints on substantive legal issues.

As an eight-year member of the Grievance Commission, I participated in issuing recommendations to the Iowa Supreme Court regarding ethics cases presented by the Attorney Disciplinary Board. I wrote several opinions for the Commission, and also authored at least two dissenting opinions. The Iowa Supreme Court issues all rulings in attorney ethics cases, so my significant experience with the Grievance Commission would be of great benefit in considering those cases as a member of the Court.

- 14. If you have ever held public office or have you ever been a candidate for public office, describe the public office held or sought, the location of the public office, and the dates of service.**

I have never held public office.

I applied to serve on the Iowa Court of Appeals in 2009.

- 15. If you are currently an officer, director, partner, sole proprietor, or otherwise engaged in the management of any business enterprise or nonprofit organization other than a law practice, provide the following information about your position(s) and title(s):**

- a. Name of business / organization.**
- b. Your title.**
- c. Your duties.**
- d. Dates of involvement.**

I am currently an at-large director on the Public Defender Association of Iowa Board of Directors. I was elected to the board in June 2019. The purposes of our private nonprofit organization include promoting a better understanding of constitutional and criminal law, promoting equality of justice for all, and promoting quality criminal defense work for all indigent accused persons. We provide an annual criminal law seminar for public defenders, criminal defense attorneys, juvenile court attorneys, and investigators. We occasionally offer amicus support for cases within the purview of our mission.

- 16. List all bar associations and legal- or judicial-related committees or groups of which you are or have been a member and give the titles and dates of any offices that you held in those groups.**

Member, Iowa State Bar Association, Sept. 1998 – present

Jury Instruction Committee, July 2014 – present

Criminal Law Section Council, June 2003 – June 2006, June 2007 – June 2013,  
June 2019-present

Council Chair, July 2009 – June 2012

Member, Legislative subcommittee, June 2016-present



Chair, Seminar subcommittee, July 2005 – July 2009  
Editor, Criminal Law Newsletter, July 2003 – Aug. 2005  
Appellate Practice Committee, June 2003 – June 2004, June 2007 – June 2008

Member, Public Defender Association of Iowa, June 2002 – present  
At-Large Director, June 2008 – June 2009, June 2019-present  
Secretary, June 2009 – June 2011

Member, National Association of Criminal Defense Lawyers, June 2003 – present

Member, Iowa Supreme Court Advisory Committee on the Rules of Criminal Procedure,  
Sept. 2008 – Sept. 2014

Member, Grievance Commission of the Iowa Supreme Court, Aug. 2005 – Jan. 2014

Member, Iowa Supreme Court Expanded Appellate Rules Revision Committee, May  
2007 – Dec. 2007

Member, American Bar Association, Sept. 1998 – June 2002

Third District Representative, Iowa Organization for Women Attorneys, Sept. 1998 –  
Sept. 1999

- 17. List all other professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed above, to which you have participated, since graduation from law school. Provide dates of membership or participation and indicate any office you held. “Participation” means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings.**

American Civil Liberties Union of Iowa, Member, Sept. 1998-present  
Board of Directors, Mar. 2000 – Mar. 2007  
President, Mar. 2004 – Mar. 2007  
Executive Committee Member, Mar. 2003 – Mar. 2007  
Legal Committee Chair, Mar. 2002 – Mar. 2004

Midtown Heights Homeowners Association, Member, July 2009 – present  
HOA President, Aug. 2012 – Dec. 2016  
HOA Secretary, Dec. 2010 – Aug. 2012

Downtown School Parent-Teachers Association, Member, Aug. 2019 – present

I am a member of the following organizations but have not kept records as to when I initially became a member. I have provided estimates as to the duration of my memberships:

Greater Des Moines Botanical Center, 2018 – present

The Ocean Conservancy, 2015 – present

Iowa Public Radio, 2015 – present

Science Center of Iowa, 2014 – present

Blank Park Zoo, 2014 – present

The Nature Conservancy, 1998 – present

- 18. If you have held judicial office, list at least three opinions that best reflect your approach to writing and deciding cases. For each case, include a brief explanation as to why you selected the opinion and a citation for your opinion and any reviewing entity's or court's opinion. If either opinion is not publicly available (i.e., available on Westlaw or a public website other than the court's electronic filing system), please attach a copy of the opinion.**

I have not previously held judicial office.

- 19. If you have not held judicial office or served in a quasi-judicial position, provide at least three writing samples (brief, article, book, etc.) that reflect your work.**

Although I have served in a quasi-judicial position with the Grievance Commission, I am providing additional writing samples that reflect my work. The samples include my brief in opposition to the petition for certiorari in State of Iowa v. Marvis Latrell Jackson, U.S. Supreme Court Docket No. 16-157, and my page proof brief for appellant in State of Iowa v. Jeffrey Allen Burdette Jr., Iowa Supreme Court No. 19-1643. I have purposely removed the tables from the briefs to decrease the length of the documents. I have also included the Grievance Commission opinion and my dissent in Iowa Supreme Court Attorney Disciplinary Board v. David J. Isaacson, Docket No. 640 (January 17, 2008). The Iowa Supreme Court ultimately followed my dissent with respect to the underlying violations in Iowa Supreme Court Attorney Disciplinary Board v. David John Isaacson, 750 N.W.2d 104 (Iowa 2008).

#### **OTHER INFORMATION**

- 20. If any member of the State Judicial Nominating Commission is your spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister, state the Commissioner's name and his or her familial relationship with you.**

Not applicable.

- 21. If any member of the State Judicial Nominating Commission is a current law partner or business partner, state the Commissioner's name and describe his or her professional relationship with you.**

Not applicable.

- 22. List the titles, publishers, and dates of books, articles, blog posts, letters to the editor, editorial pieces, or other published material you have written or edited.**

*Case Law, Digests, and Citators*, Iowa Legal Research Guide (2003)

*Evolution, Creation and Naturally Selecting Intelligent Design out of the Public Schools*, 34 Univ. Toledo L. Rev. 203 (Winter 2003)

*Nations within a Nation: The Evolution of Tribal Immunity*, 24 Am. Indian L. Rev. 99 (1999-2000)

*Who Controls International Trade? Congressional Delegation of the Foreign Commerce Power*, 47 Drake L. Rev. 141 (1998)

During my college career I was also a staff writer for or contributor to the following publications: The Iowa State Daily, the Bomb yearbook, Ethos magazine, The Drummer newspaper, The Siren newspaper, and the Dyersville Commercial.

- 23. List all speeches, talks, or other public presentations that you have delivered for at least the last ten years, including the title of the presentation or a brief summary of the subject matter of the presentation, the group to whom the presentation was delivered, and the date of the presentation.**

**Presenter**, State Public Defender Appellate Training, Sept. 27, 2019  
Appellate ethics

**Presenter**, State Public Defender Postconviction Basic Training, Sept. 26, 2019  
Postconviction appeals and Senate File 589

**Presenter**, Iowa State Bar Association Webinar, Sept. 26, 2019  
Appellate ethics

**Presenter**, Iowa State Bar Association Webinar, Dec. 10, 2018  
"Appeal as breach" provisions in guilty pleas

**Presenter**, State Public Defender Postconviction Basic Training, Oct. 5, 2018  
Postconviction appeals

**Participant**, State Public Defender Appellate Training, Apr. 2014 – Oct. 2017  
Draft appellate practice outline for use at training

**Panelist**, Public Defender Association of Iowa Annual Meeting, July 17, 2016  
Making a record for appeal

**Panelist**, Iowa State Bar Association Annual Meeting, July 13, 2016  
Preserving error for appeal

**Presenter**, SPD Litigating Science Webinar Series, July 2015 – Apr. 2016  
Develop and present webinar series on litigating forensic science cases

**Presenter**, Iowa Justice Reform Consortium Monthly Meeting, Oct. 18, 2012  
Discuss the Appellate Defender Office, ISBA Criminal Law Section

**Presenter**, Iowa Association of Criminal Defense Lawyers Seminar, Nov. 3, 2011  
Upcoming issues in the Iowa Supreme Court

**Presenter**, Iowa State Bar Association Criminal Law Seminar, June 4, 2010  
Issues in appellate practice

**Presenter**, Iowa State Bar Association Criminal Law Seminar, May 29, 2009  
Overview of the grievance process

**Presenter**, Iowa State Bar Association Appellate Practice Seminar, Feb. 20, 2009  
Appellate practice tips

**Presenter**, Legal Support Professionals of Iowa, Sept. 20, 2008  
The ethics of criminal defense

**Presenter**, Public Defender Association of Iowa Seminar, June 19, 2008  
Overview of the grievance process

**Panelist**, ACLU of Iowa Conference on Civil Liberties, May 5, 2007  
Treatment alternatives to incarceration

**Moderator**, Iowa State Bar Association Criminal Law Seminar, Apr. 20-21, 2006  
Moderate panels on ethics rules and handling difficult clients

**Presenter**, Iowa Public Defender 2,000-Foot Rule Workshop, Feb. 20, 2006  
How to make an appellate record

**Panelist**, Drake Law School Black Law Student Association, Oct. 26, 2006  
Public “know your rights” forum on criminal law issues

**Presenter**, Iowa State Bar Association Criminal Law Seminar, Apr. 14, 2005  
State appellate advocacy

**Panelist**, Iowa State Bar Association Criminal Law Seminar, Apr. 29, 2004  
Arguing cases before the United States Supreme Court

**Panelist**, Iowa Conference of Political Scientists, Oct. 3, 1997  
Member of panel studying the U.S. Congress; presented paper on effects of 17th Amendment on the demographics of the U.S. Senate

- 24. List all the social media applications (e.g., Facebook, Twitter, Snapchat, Instagram, LinkedIn) that you have used in the past five years and your account name or other identifying information (excluding passwords) for each account.**

Facebook – Theresa Wilson

Twitter – Theresa Wilson

- 25. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.**

**Professional recognition:**

Virginia Larson Award, Public Defender of the Year, Public Defender Association of Iowa, 2018  
Roxanne Conlin Public Service Award, Iowa Association for Justice, 2016  
Presented to the Appellate Defender Office for its work in juvenile sentencing  
John Adams Award, Iowa Association of Criminal Defense Lawyers, 2014  
Outstanding Section Council Chair, Iowa State Bar Association, 2010  
Virginia Larson Award, Public Defender of the Year, Public Defender Association of Iowa, 2007  
Golden Dome Award, Public Defender Employee of the Year, 2004

**Collegiate recognition:**

Drake University Law School

Graduated with honors  
Academic Achievement Award, Law and Religion (Tie), 1997  
Dean's List, 1996 and 1997  
Drake University Student Scholarship, 1995-1997

Iowa State University, Graduate

ISU Premium for Academic Excellence Award, 1996

Iowa State University, Undergraduate

Graduated with distinction  
Member, Honors Program  
Member, Lamos liberal arts and sciences honor society  
Member, Golden Key National Honor Society  
Member, Phi Beta Kappa honor society  
Member, Kappa Tau Alpha journalism honor society  
Member, Alpha Lambda Delta/Phi Eta Sigma honor society  
Dean's List, 1991-1995  
High Scholarship Student Awards (top two percent in the College of Liberal Arts and Sciences), 1992-1995  
Highest Graduating Senior in Journalism, 1995  
VEISHEA Outstanding Student Leader Award, 1995  
Laura Vernon Scholarship for journalism, 1995  
William Randolph Hearst Award for Editorial Writing, 1995  
National Federation of Press Women Junior/Senior Scholarship runner up, 1994  
Carl Hamilton Scholarship (journalism), 1994  
Lane Wells Alumni Scholarship, 1994  
Scripps Howard Scholarship (journalism), 1993 and 1994  
Ruth Church Scholarship (journalism), 1993  
ISU Journalism Alumni Scholarship, 1991  
Admitted with Academic Recognition, 1991

**26. Provide the names and telephone numbers of at least five people who would be able to comment on your qualifications to serve in judicial office. Briefly state the nature of your relationship with each person.**

Hon. Andrew Chappell, 319-398-3920

The Honorable Judge Andrew Chappell is a district court judge in the 6<sup>th</sup> Judicial District. I have worked with Judge Chappell on the Iowa State Bar Association's Jury Instructions Committee for several years, and we also briefly worked together on the Grievance Commission.

Hon. Elisabeth Reynoldson, 641-342-6229

The Honorable Judge Elisabeth Reynoldson is a district court judge in District 5B. Prior to being appointed to the bench, Judge Reynoldson was an Assistant Attorney General in the Criminal Appeals Division. We sometimes argued cases against one another, but we also collaborated on various matters as members of the Iowa State Bar Association.

Dr. Brian Farrell, 319-521-6862

Brian Farrell is a faculty member at the University of Iowa School of Law. He is the Director of the Citizen Law Program, an Associate Director of the UI Center for Human Rights, and was a co-founder of the Innocence Project of Iowa. Brian and I have served together on the Iowa State Bar Association's Criminal Law Section Council and the Board of Directors of the ACLU of Iowa. We also collaborated on the creation and presentation of the State Public Defender's Litigating Forensic Science webinar series.

Mark Smith, 515-979-0938

Mark Smith is a former State Appellate Defender and my immediate past supervisor. He is knowledgeable regarding my appellate work and my volunteer work with the Iowa State Bar Association.

Erica Nichols Cook, 217-725-6499

Erica Nichols Cook is the director of the State Public Defender's Wrongful Convictions Division. Erica and I serve together on the Board of Directors of the Public Defender Association of Iowa. We collaborated on the creation and presentation of the State Public Defender's Litigating Forensic Science webinar series, and we have also worked together on the State Public Defender's annual Postconviction Basic Training Seminar.

**27. Explain why you are seeking this judicial position.**

I have always had an interest in serving on the Iowa Supreme Court, but I am also fortunate to work in a position that allows me to use my legal research, writing, and argument skills and to work with colleagues who share my passion for appellate work. I have found joy in providing quality public service to those who most need legal assistance.

With the recent loss of several Iowa Supreme Court Justices within the last two years, my long-standing interest in serving on the Court has been coupled with a belief that now is the appropriate time to present my qualifications to the Commission. In recent years, these Justices have led the way in making the Court more visible to the public, in educating the public about the role of the courts, in addressing disproportionate minority impact within the justice system, and in making the justice system accessible to all. I share these goals, and I no longer consider any potential appointment to the Court to be simply a matter of personal interest. The Court needs good attorneys – and good people – to step forward to help guide the Court and our justice system as a whole into the future that awaits. I look forward to serving the public by using my skills and experience to enhance the work of the Court.

**28. Explain how your appointment would enhance the court.**

The strongest candidates for the Iowa Supreme Court should exemplify the qualities of competence, integrity, thoughtfulness, respect, impartiality, decisiveness, and efficiency. My background and temperament demonstrate all of these qualities.

I have exceptionally strong legal research and writing skills, which have been honed since my days in college and law school. Although my legal experience has been primarily in criminal law, I am fully capable of finding the relevant applicable authority in any area of law. My experience as an appellate attorney means I can immediately begin applying the norms and rules of appellate practice to my work on the Court. My practical experience in criminal law and appellate procedure would add to breadth of Court's knowledge.

I have a strong grasp of the Rules of Professional Conduct and can immediately immerse myself in the ethics cases the Court considers. I make a point of conducting myself with integrity with clients, opposing counsel, and the courts.

I am efficient in handling my caseload, even while actively participating in various law-related activities. I was able to coordinate three-day legal education seminars for Iowa criminal defense attorneys in 2009 and 2018 while still effectively managing my caseload. Similarly, I took on my office's United States Supreme Court litigation as necessary without disrupting my other work. As a Supreme Court Justice, I would contribute to the thoughtful yet efficient disposition of cases.

I do not fear making decisions. I have served in various positions over the years that required me to take the lead on sometimes divisive issues. Whether it has been as President of the ACLU of Iowa Board of Directors, as Chair of the ISBA Criminal Law Section Council, or as President of my homeowner's association, I have had to make decisions based on the best information available and the best interests of the organization involved and then be able to defend the decisions made.

Of course, the work of the Iowa Supreme Court is not limited to issuing decisions. The Court is also responsible for enacting changes to the Iowa Court Rules. I have

significant experience in addressing and applying not only the Rules of Appellate Procedure, but the Rules of Criminal Procedure, the Rules of Evidence, and the Rules of Professional Conduct. I have served on several court committees tasked with considering revisions to our court rules. My interest in and experience with the Iowa Court Rules would provide a benefit to the Court.

Finally, I am fully comfortable with public speaking regarding matters of law and procedure. The Court has made a significant effort to educate the public about the role and work of the Court and our judicial system generally. I can contribute to the Court's efforts in this regard and look forward to doing so.

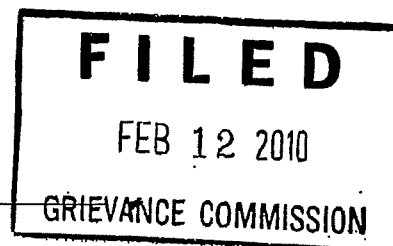
**29. Provide any additional information that you believe the Commission or the Governor should know in considering your application.**

Becoming a Supreme Court justice is often a career goal for attorneys, but the decision to make that step should not be taken lightly. Being a justice is significantly different than being an attorney. There are limitations on the conduct of justices that do not apply to attorneys. Becoming a justice can mean limiting your social interactions with fellow attorneys, foregoing involvement in certain organizations, and carefully limiting any public statements. At the 2019 Supreme Court Banquet, Chief Justice Cady acknowledged the toll being a Supreme Court Justice took not only on his personal life but on the lives of his family members as well. The role of an Iowa Supreme Court Justice is a noble one and one that many may seek, but those who wish to become a Justice must be prepared to accept the constraints that come with doing so.

When I decided to apply for the opening on the Iowa Supreme Court, I made a point of reviewing the Code of Judicial Conduct. I paid particular attention to the rules relating to judicial candidates. I have made every effort to abide by those rules and I understand the constraints I would be under should I be selected to be an Iowa Supreme Court Justice. The restrictions are necessary to preserve the integrity and impartiality of our Court and I am fully prepared to abide by them.



BEFORE THE GRIEVANCE COMMISSION OF  
THE SUPREME COURT OF IOWA



IOWA SUPREME COURT )  
ATTORNEY DISCIPLINARY BOARD, )

Complainant, )

vs. )

MARK A. TEMPLETON )

Respondent. )

Docket Number 687

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION

On October 23, 2009, the Iowa Supreme Court Attorney Disciplinary Board (hereinafter "the Board") filed a complaint against Respondent Mark A. Templeton related to Templeton's multiple misdemeanor convictions. In January 2008 Templeton pleaded guilty to six charges of Invasion of Privacy – Nudity, serious misdemeanors in violation of Iowa Code section 709.21, and one count of Trespass, a simple misdemeanor in violation of Iowa Code section 716.8, in Polk County District Court.

The complaint alleged that Templeton violated the following Rules of Professional Conduct: Rule 32:8.4(a) (It is professional misconduct for a lawyer to violate or attempt to violate the Iowa Rules of Professional Conduct); Rule 32:8.4(b) (It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and Rule 32:8.4(d) (It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice). The complaint also provided notice pursuant to Iowa Court Rule 35.7(3)(c) that the Board intended to rely on issue preclusion.

On November 9, 2009, Templeton filed an answer admitting to the majority of allegations in the complaint. He preserved his right to present evidence in mitigation of the allegations.

A hearing before the 407<sup>th</sup> Division of the Grievance Commission was held on January 22, 2010. The Board appeared by attorney Amanda Robinson. Templeton appeared in person and by attorney Mark McCormick. The parties presented evidence and argument.

### **Standard of Review**

The Board has the burden to prove disciplinary violations by a convincing preponderance of the evidence. Attorney Disciplinary Board v. Lesyshen, 712 N.W.2d 101, 104 (2006). This standard is less than the “reasonable doubt” required in criminal cases, but more than the “preponderance of the evidence” standard used in civil cases. Id.

### **Inactive Status**

The fact that an attorney is in inactive status does not deprive the Iowa Supreme Court or the Commission of authority to discipline the attorney for his or her misconduct. Board of Prof'l Ethics & Conduct v. Mulford, 625 N.W.2d 672, 679 (Iowa 2001).

### **Findings of Fact**

The Division finds the doctrine of issue preclusion properly applies to establish the fact of Templeton's criminal convictions. See Iowa Ct. Rule 35.7(3) (2009) (issue preclusion is established when the issue was resolved in a criminal proceeding, the

burden of proof in the prior proceeding was greater than a preponderance of the evidence, and the party seeking preclusive effective has given timely notice if intent to invoke issue preclusion). Likewise, through the answer to the complaint and his testimony at hearing, Templeton admitted his criminal convictions.

The Board also presented evidence regarding Templeton's criminal acts.

E.Y. testified that she lived at [redacted] in West Des Moines with [redacted] B.D. and [redacted] H.T. [redacted] during the first half of 2007. Starting in March of that year, [redacted] could hear someone outside of the house at night. E.Y. observed someone outside of the residence at least 5-6 times in a several-month span. [redacted] B.D. testified to seeing a man walk through her enclosed backyard at least twice.

E.Y. testified that she always took a shower before she went to bed, and would often flip the lights on and off to determine whether someone was watching her. She and the other residents would take precautions such as calling ahead if they were coming home late so that another roommate could be waiting at the door for them. They stopped taking their regular walks around the block and would not go into the backyard alone. They placed a blanket over the bathroom window and got heavy duty blinds for the bedroom window.

E.Y. contacted the police, who made 44 calls for service to the residence over the next few months.<sup>1</sup> Officers tried to use a camera to capture an image of the person, but the equipment malfunctioned. H.T. tried to take a photo of the man when she saw

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<sup>1</sup> . West Des Moines Detective Tom Boyd testified that some of these calls would have been initiated by the residence while other calls would have been initiated by police, as when officers were in the area and voluntarily stopped by to check the residence. Boyd testified that the number of service calls did not mean that Templeton was outside of the residence on 44 occasions. Boyd believed, however, that the number of service calls contradicted Templeton's admission during their interview that he was outside the residence only four or five times.

him as E.Y. was taking a shower, but she was unable to get a picture. Family members ended up placing a motion-activated hunting camera in a tree near the house. This camera eventually captured an image of the man on the day E.Y. and her family were leaving for a vacation.

Later that day, E.Y. and her family saw the man at a convenience store. Her brother got the license plate number of the vehicle, which was reported to police. Police were able to track the vehicle to Templeton. Detective Tom Boyd of the West Des Moines Police Department conducted a phone interview with Templeton, who admitted being the person outside of E.Y.'s room. (Ex. 1). He admitted his actions were for sexual gratification and he told Boyd he would seek counseling. (Ex. 1).

Templeton was charged with six counts of Invasion of Privacy, serious misdemeanors in violation of Iowa Code section 709.21, and Criminal Trespass, a simple misdemeanor in violation of Iowa Code section 716.8. (Ex. 2 pp. 25, 53). On November 7, 2007, Templeton entered a guilty plea to all counts. (Ex. 2 pp. 13-14). On January 10, 2008, Templeton was sentenced to one year in prison for each Invasion of Privacy count with the counts to run consecutively. (Ex. 2 p. 7). The court suspended the sentence and placed Templeton on probation for six years and ordered him to complete the sex offender treatment program. (Ex. 2 pp. 7-8).

Don Hall, a clinical social worker who directs the sex offender treatment program for the Fifth Judicial District, testified regarding Templeton's participation in the program. Templeton was evaluated and diagnosed with depression, anxiety, exhibitionism and voyeurism. Hall described Templeton as compliant with the program, earning privileges most participants do not get. By the time of the hearing, Templeton

had successfully completed Phases I and II of the program and was in Phase III for after care and relapse prevention. Hall expected Templeton to complete Phase III in 2010 and be on probation for another three years following that. He testified that Templeton was at a low risk to reoffend.

Templeton was admitted to the practice of law in 1987. He entered private practice in 1994 after working in the health care industry for a number of years. He was a solo practitioner for about seven years practicing primarily in physician contracts and sales of medical practices. He soon found that his client base of doctors was dwindling and he was suffering the stresses of having a smaller client base. Although Templeton had been diagnosed with depression years earlier, he had not yet been formally diagnosed with anxiety disorder — a diagnosis that would come after his arrest. In 2000, Templeton determined he would be more comfortable not practicing law because it contributed to his anxiety disorder and instead focused his efforts on newspaper circulation.

His work in newspaper circulation involved supervising deliveries in other regions as well as doing deliveries himself. This caused him to have odd work hours late at night. Templeton explained this is why he focused on E.Y. 's residence because she was up late at night when he would be doing his deliveries.

Templeton said he did not realize E.Y. and the others were aware of his presence outside of their home and he had no intention of terrorizing them. He told the Division he regretted his behavior and its impact on the women. He acknowledged having an issue with voyeurism most of his life. He is currently taking medications for both depression and anxiety and testified he is doing better with the medications.

Based upon the evidence presented at hearing, including Templeton's admissions, and the rule is issue preclusion, the Division finds Respondent is the same Mark Templeton who was convicted of the misdemeanor offenses outlined in the complaint.

### **Conclusions of Law**

The Division finds that Templeton engaged in criminal conduct adversely reflecting on the practice of law in violation of Iowa Rule of Professional Conduct 32:8.4(b). One's fitness to practice law encompasses more than simple competency in legal matters; it "includes one's character and one's suitability to act as an officer of the court." Board of Prof'l Ethics & Conduct v. Mulford, 625 N.W.2d 672, 683 (Iowa 2001). Lawyers take an oath to uphold the law, and they violate that oath when they commit a criminal act. Id. An attorney's decision to violate the law and his or her oath reflects negatively on his or her fitness to practice law. Id. See also Committee on Prof'l Ethics & Conduct v. Vesole, 400 N.W.2d 591, 592 (Iowa 1987)(attorney pleaded guilty to indecent exposure); Committee on Prof'l Ethics & Conduct v. Floy, 334 N.W.2d 739, 740 (Iowa 1983)(attorney convicted of making obscene phone calls).

The Division also finds the Board has proven Templeton violated Rule 32:8(4)(d). It is a violation for an attorney to engage in conduct that is prejudicial to the administration of justice. Iowa R. Prof'l Cond. 32:8(4)(d) (2009). Any time an attorney violates essential criminal laws, such conduct prejudices the administration of justice. Board of Prof'l Ethics & Conduct v. Lyzenga, 619 N.W.2d 327, 330 (Iowa 2000).

Because we find Templeton violated Rules 32:8(4)(b) and (d), the Division likewise finds he violated Rule 32:8(4)(a). It is misconduct for a lawyer to violate the Iowa Rules of Professional Misconduct. Iowa Rule Prof'l Cond. 32:8(4)(a) (2009).

### **Sanction**

Disciplinary sanctions are based upon the circumstances of each case. Board of Prof'l Ethics & Conduct v. Blazek, 590 N.W.2d 501, 503 (Iowa 1999). Relevant factors to consider include the nature of the violations, the need for deterrence, the protection of the public, the maintenance of the reputation of the bar as a whole, and the respondent's fitness to practice law. Id. Disciplinary proceedings are generally not designed to punish criminal behavior. Id.

The Division considers that the criminal charges for which Templeton was convicted were misdemeanor offenses and did not involve physical contact with the victims. Nonetheless, the Division is also mindful that the criminal conduct occurred repeatedly over a period of time and placed the occupants of the house in a considerable amount of fear. One of the occupants was troubled enough by the events to move out of the residence and quit her job.

There is some question as to whether Templeton truly accepts responsibility for his actions. During the hearing he certainly acknowledged the impropriety of his behavior and his remorse at the fear he caused. Even so, he claimed that he saw Ms. E.Y. in any state of undress only twice, which is inconsistent with his plea to six counts of Invasion of Privacy. It appears Templeton is minimizing his conduct to a certain extent:

Templeton has provided significant mitigating evidence regarding the counseling he has received both privately and through the sex offender treatment program. He also presented evidence on the restrictions he is under to prevent repeat behavior, including his decision to continue with electronic monitoring. He was apologetic for his behavior at the hearing.

Despite this mitigating evidence, the Division questions whether Templeton would have continued to engage in his criminal behavior had he not been apprehended. At hearing, Templeton explained that he did not truly understand the nature of his psychological issues until he was evaluated while the criminal proceedings were pending. The Division notes, however, that these incidents are not the first time Templeton has engaged in questionable behavior. In his 2007 evaluation by Charles Camp, admitted as Exhibit 2, Templeton acknowledged “throughout his life he has struggled with anxiety and compulsive sexual behavior, including masturbation, an addiction to pornography, and exposing himself.” (Ex. 2 p. 82). He admitted exposing himself in seventh grade and again in graduate school,<sup>2</sup> with both incidents resulting in contact with police. (Ex. 2 p. 85). He also admitted window-peeping on his sister-in-law and exposing himself around the age of 28. (Ex. 2 p. 85). It does not appear that Templeton sought treatment for these proclivities prior to his apprehension.

This case does not represent the traditional disciplinary case in that there is no allegation that Templeton’s violations impacted any of his law clients. In fact, it was established at hearing that Templeton had not actively engaged in the practice of law for several years prior to his criminal charges. He was, instead, working in the field of

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<sup>2</sup>. The exhibit refers to “graduate school.” The Division notes the only evidence in the record as to Templeton attending graduate school relates to his attendance at Drake University School of Law.



newspaper circulation. The fact that Templeton's criminal charges were unrelated to the practice of law, however, does not mean he is immune from disciplinary sanctions. Board of Prof'l Ethics & Conduct v. Mulford, 625 N.W.2d 672, 679 (Iowa 2001).

The Division is mindful of the impression Templeton's conduct would have upon the public's perception of attorneys. E.Y. testified that she was shocked that someone with a law license would engage in such behavior. The Division agrees. Templeton's behavior is not behavior becoming an attorney, whether actively practicing or not.

Finally, the Division has serious concerns regarding Templeton's fitness to practice law. It is notable that Templeton essentially retired from the practice of law in 2000 after - in his own words at the hearing - his anxiety disorder led him to believe he would be more comfortable not practicing law. Templeton's anxiety disorder was not diagnosed until after he was arrested, and he is taking medications that have apparently assisted him in controlling the disorder. Nonetheless, he has not practiced or taken continuing legal education since 2000 and testified that he has no intent to return to the practice of law as long as the newspaper circulation business continues to provide him with an income.

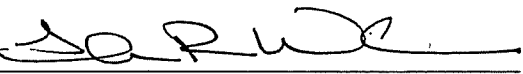
Given the repeated nature of Templeton's criminal conduct, the questions surrounding whether he would have sought treatment had he not been charged, his years without practicing law, and his history of addictive and psychological issues, the Division deems a lengthy suspension with conditions upon reinstatement is warranted. See Committee on Prof'l Ethics & Conduct v. Vesole, 400 N.W.2d 591, 592 (Iowa 1987)(three-year suspension for attorney who pleaded guilty to indecent exposure);


Committee on Prof'l Ethics & Conduct v. Floy, 334 N.W.2d 739, 740 (Iowa 1983)(18-month suspension for attorney convicted of making obscene phone calls).

Accordingly, the Division recommends Templeton's license to practice law be suspended without any possibility of reinstatement for two years. Upon application for reinstatement pursuant to Iowa Court Rule 35.13, Templeton shall also: 1) have the burden of proving he has continued to successfully comply with all conditions of his probation, including the sex offender treatment program; 2) have the burden of proving he is compliant with any medication regimens recommended by his counselors and physicians; 3) include with his application for reinstatement reports of two treating physicians regarding his progress and prognosis; and 4) have the burden of proving he has developed a "safety net" of assistance he can turn to should he encounter problems with depression or anxiety disorder while engaged in the practice of law.

The Division has authorized the President to sign this decision on its behalf.

407<sup>th</sup> Division of the Grievance Commission

By   
Theresa R. Wilson  
President, 407<sup>th</sup> Division  
Grievance Commission of the Supreme Court of Iowa

 KeyCite Yellow Flag - Negative Treatment  
Distinguished by Iowa Supreme Court Attorney Disciplinary Bd. v.  
Moothart, Iowa, March 6, 2015

784 N.W.2d 761  
Supreme Court of Iowa.

IOWA SUPREME COURT ATTORNEY  
DISCIPLINARY BOARD, Complainant,

v.

**Mark A. TEMPLETON**, Respondent.

No. 10-0255.

|  
July 2, 2010.

### Synopsis

**Background:** Attorney disciplinary proceeding was brought.

**Holdings:** The Supreme Court, Wiggins, J., held that:

an attorney's mere act of committing a crime does not violate professional conduct rule barring conduct prejudicial to the administration of justice; overruling *Iowa Supreme Court Attorney Disciplinary Bd. v. Johnson*, 774 N.W.2d 496; *Iowa Supreme Court Attorney Disciplinary Bd. v. Dull*, 713 N.W.2d 199; and

indefinite suspension with no possibility of reinstatement for three months was appropriate sanction for conduct adversely reflecting on fitness as a lawyer that consisted of attorney's looking through female victims' bedroom and bathroom windows on multiple occasions.

License suspended.

### Attorneys and Law Firms

\*763 Charles L. Harrington and Amanda K. Robinson, Des Moines, for complainant.

Mark McCormick, Belin McCormick, P.C., Des Moines, for respondent.

### Opinion

WIGGINS, Justice.

The Iowa Supreme Court Attorney Disciplinary Board filed a complaint against \*764 the respondent, Mark A. Templeton, with the Grievance Commission of the Supreme Court of Iowa alleging Templeton committed various violations of the Iowa Rules of Professional Conduct. The commission found Templeton's conduct violated three provisions of the rules and recommended we suspend Templeton's license to practice law with no possibility of reinstatement for a period of two years. On our de novo review, we find Templeton violated one rule that requires us to impose sanctions. Accordingly, we suspend Templeton's license to practice law indefinitely with no possibility of reinstatement for a period of three months.

### I. Scope of Review.

We review attorney disciplinary proceedings de novo. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Hoglan*, 781 N.W.2d 279, 281 (Iowa 2010). The board has the burden of proving an attorney's ethical misconduct by a convincing preponderance of the evidence. *Id.* "This burden is less than proof beyond a reasonable doubt, but more than the preponderance standard required in the usual civil case." *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Lett*, 674 N.W.2d 139, 142 (Iowa 2004). Upon proof of misconduct, we may impose a greater or lesser sanction than the sanction recommended by the commission. *Id.*

### II. Findings of Fact.

On our de novo review, we find the following facts. Mark Templeton was fifty years old at the time of the grievance commission hearing. He is a graduate of Drake University Law School and became a licensed lawyer in January 1986. He practiced law until 2000. In 2000 Templeton took inactive status and began managing a newspaper distribution business. In 2007 he distributed newspapers in four states and personally delivered the newspapers in the Des Moines area.

Through his newspaper deliveries, he became aware of a house in the Des Moines area where three single women lived. The owner of the house, Mary Doe, was eighty years old at the time of the incident that led to this proceeding. The tenants were Jane Roe, a twenty-four-year-old nurse, and Paula Poe, a twenty-one-year-old intern at a local church.<sup>1</sup>

Beginning in March 2007, Roe began to hear what she thought was someone walking across the crushed landscape rocks outside her master bedroom and bathroom windows. These noises began to occur more frequently throughout the month of March. In April, as Roe turned off the bathroom lights, she

looked out the window and saw a man duck, run from the window to a silver car parked in the street, and drive away. Roe observed this activity happen four to six times. Each time she saw the man, she called the police.

After repeated reports by Roe and her roommates, the police set up a surveillance camera to try to capture images of the man. The camera malfunctioned and failed to record any images of the trespasser. After the surveillance camera set up by the police failed, one of Roe's family members installed a motion-detection camera used for deer hunting on a tree outside of the house in an attempt to capture images of the person coming to Roe's windows.

On June 24 Roe's family was staying with her at the house. In the morning, Roe and her family were planning to go to the airport and leave for a vacation. \*765 Around midnight, Roe was in her bedroom packing for the trip when she noticed the motion-detection camera was flashing, meaning something in front of the house had triggered it. Roe looked outside, but saw no one. Approximately five minutes later, a car pulled up in front of the house and turned its lights off but shortly thereafter sped away. After the car left, Roe and her family removed the camera from the tree, downloaded the pictures it had taken onto Roe's laptop computer, and discovered the camera had captured pictures of a white male with facial hair and glasses wearing a dark blue or black baseball hat, t-shirt, and khaki shorts. Roe notified the police she had pictures of the person looking into her windows.

At five o'clock the next morning, Roe's family left for the airport. On the way to the airport, the family passed a neighborhood gas station. Roe's brother observed a man filling his car with gas who fit the description of the man in the photographs the motion-detection camera had taken the night before. The family obtained the license plate number of the vehicle and relayed this information to the police. A detective traced the license plate back to the registered owner, who informed the detective he had recently sold the vehicle to a friend, Mark Templeton. The detective searched for Templeton's driver's license in the department of transportation's database and located what he believed was Templeton's license. The detective compared Templeton's driver's license photograph with the photographs captured by Roe and concluded they were a match.

After determining Templeton was the primary suspect, the detective and Templeton talked on the phone. The detective informed Templeton that he had been identified as the

individual who had repeatedly been looking into Roe's windows. Templeton admitted he had visited the house approximately four or five times to look into Roe's windows while he was in the area delivering newspapers. Templeton told the detective he has had a problem with window peeping his whole life and was relieved he had been caught because otherwise this behavior probably was not going to stop. Templeton also admitted he received sexual gratification from looking into Roe's windows but denied ever masturbating while doing so. We agree the evidence does not support a finding that Templeton was masturbating while looking into the windows.

Templeton promised to seek help and not engage in this type of conduct again. The detective informed Templeton he would talk with the victims before proceeding any further, but he could not guarantee the State would not pursue criminal charges.

During the time Templeton was looking in Roe's windows, Doe, Roe, and Poe were terrified. The women felt they were being stalked and were concerned the person looking into their windows was there to do them harm. Doe was so concerned about her safety she would call the police almost daily to inquire if the police had caught the perpetrator. Roe felt the perpetrator was invading her privacy and she was being taken advantage of as a woman. When she came home alone at night, she would call ahead so her roommates would be at the door when she arrived home. Roe also put blankets over her windows and began dressing and undressing in a closet that did not have any windows. Poe was so terrified by the incidents she quit her internship, moved home with her parents, and refused to participate in any proceedings against Templeton.

The State charged Templeton with one count of criminal trespass and one count of invasion of privacy. The county attorney later amended the charges to six counts of invasion of privacy-nudity, a serious misdemeanor, \*766 in violation of Iowa Code section 709.21 (2005). During the course of the proceedings, Templeton sought treatment for the behavior resulting in his arrest.

On September 18 Templeton met with a sex-offender-treatment specialist who conducted a two-hour clinical interview, administered different risk assessment tests, and completed a risk assessment/amenability-to-treatment evaluation of Templeton. The specialist concluded Templeton presented a low level of risk for repeated abusive behavior

and suggested that he participate in outpatient sex-offender treatment.

On November 7 Templeton pleaded guilty to all six counts of invasion of privacy-nudity. The district court sentenced Templeton to a period not to exceed one year for each of the six counts of invasion of privacy-nudity, to run consecutively, suspended this sentence, placed Templeton on probation for a period of six years, and ordered Templeton to complete sex-offender treatment as an added condition of probation.

Subsequently, the attorney disciplinary board filed its complaint against Templeton. The complaint invoked issue preclusion with regard to Templeton's conviction and alleged Templeton's window-peeping behavior and subsequent conviction violated Iowa Rules of Professional Conduct 32:8.4(a) (violating or attempting to violate the Iowa Rules of Professional Conduct), 32:8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), and 32:8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

At the time of the hearing, Templeton had completed the first two phases of a four-phase sex-offender-treatment program. He is scheduled to complete the fourth phase of the treatment program in 2012. Templeton suffers from major depressive disorder, anxiety disorder, voyeurism, and exhibitionism. He has met all expectations with regard to his compliance and performance during his course of treatment. Templeton's risk of recidivism is relatively low. In order to further his recovery and ensure he is complying with his probation, Templeton has voluntarily chosen to continue to wear his monitoring ankle bracelet.

On February 12, 2010, the grievance commission filed its findings of fact, conclusions of law, and recommendation. The commission concluded the board had proved Templeton's conduct violated Iowa Rules of Professional Conduct 32:8.4(a), (b), and (d). After weighing the aggravating and mitigating factors in the case, the commission recommended this court suspend Templeton's license to practice law for two years without any possibility of reinstatement. The commission further recommended upon Templeton's application for reinstatement he shall:

- 1) have the burden of proving he has continued to successfully comply

- with all conditions of his probation, including the sex offender treatment program; 2) have the burden of proving he is compliant with any medication regimens recommended by his counselors and physicians; 3) include with his application for reinstatement reports of two treating physicians regarding his progress and prognosis; and 4) have the burden of proving he has developed a "safety net" of assistance he can turn to should he encounter problems with depression or anxiety disorder while engaged in the practice of law.

Neither party appealed the commission's recommendation. Therefore, we are reviewing the recommendation pursuant to Iowa Court Rule 35.10(1).

### **\*767 III. Analysis.**

We have the authority to take disciplinary action against an attorney even though the attorney's license is inactive and the attorney is not actively engaged in the practice of law. *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Mulford*, 625 N.W.2d 672, 679 (Iowa 2001). This is true even if at the time of the misconduct the attorney was not acting as a lawyer. *Id.* Thus, even though Templeton's law license was on inactive status and his conduct was unrelated to his representation of clients or any other facet of the practice of law, we still have the authority to sanction him upon a finding that he has engaged in misconduct in violation of the Iowa Rules of Professional Conduct.

The commission found Templeton violated Iowa Rule of Professional Conduct 32:8.4(b). Rule 32:8.4(b) provides, "It is professional misconduct for a lawyer to ... commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Iowa R. Prof'l Conduct 32:8.4(b). A comment to the rule states: "Illegal conduct *can* reflect adversely on fitness to practice law. A pattern of repeated offenses, even ones of minor significance when considered separately, *can* indicate indifference to legal obligation." *Id.* cmt. 2 (emphasis added). The mere commission of a criminal act does not necessarily reflect adversely on the fitness of an attorney to practice law. 2 Geoffrey C. Hazard, Jr. et al., *The Law of Lawyering* § 65.4,

at 65-8 to 65-9 (3d ed. 2009 Supp.) [hereinafter "*The Law of Lawyering*"]. The nature and circumstances of the act are relevant to determine if the commission of the criminal act reflects adversely on the attorney's fitness to practice law. *Id.* § 65.4, at 65-8.

Oregon's DR 1-102(A)(2) provides: "[I]t is professional misconduct for a lawyer to 'commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.' " *In re Conduct of White*, 311 Or. 573, 815 P.2d 1257, 1265 (1991) (quoting Or. Code of Prof'l Responsibility DR 1-102(A)(2)). Oregon's rule, in effect at the time the Supreme Court of Oregon decided *White*, is similar to our rule 32:8.4(b).

In applying DR 1-102(A)(2) to a criminal act of an attorney, the Supreme Court of Oregon noted:

To some extent, every criminal act shows lack of support for our laws and diminishes public confidence in lawyers, thereby reflecting adversely on a lawyer's fitness to practice. DR 1-102(A)(2) does not sweep so broadly, however. For example, a misdemeanor assault arising from a private dispute would not, in and of itself, violate that rule. Each case must be decided on its own facts. There must be some rational connection other than the criminality of the act between the conduct and the actor's fitness to practice law. Pertinent considerations include the lawyer's mental state; the extent to which the act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct.

*Id.* at 1265 (citation omitted). Oregon's analysis as to when a criminal act reflects adversely on a lawyer's fitness to practice law is reasonable and is the analysis we now adopt to apply in our own disciplinary cases.

Here, Templeton engaged in a pattern of criminal conduct by repeatedly looking into the victims' windows. In doing so, he violated Doe's, Roe's, and Poe's privacy, and caused them to suffer emotional distress. Although his conduct was compulsive, the record also establishes he intentionally \*768 and knowingly invaded the privacy of these women. This conduct also raises serious misgivings about whether Templeton understands the concept of privacy and respects the law protecting individuals' privacy rights. For these reasons, we find Templeton's criminal acts of invading Doe's, Roe's, and Poe's privacy reflects adversely on his fitness to practice law in violation of rule 32:8.4(b). *See In re Haecker*, 664 N.E.2d 1176, 1177 (Ind.1996), *reinstatement granted*, 693 N.E.2d 529 (Ind.1998) (finding attorney's clandestine act of voyeurism of the occupants of his rental property constituted a crime that reflected adversely on his fitness as an attorney in other respects). Therefore, we agree with the commission that Templeton violated rule 32:8.4(b).

The commission also found Templeton violated rule 32:8.4(d). Rule 32:8.4(d) states: "It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice." Iowa R. Prof'l Conduct 32:8.4(d). This rule is similar to former DR 1-102(A)(5). DR 1-102(A)(5) provided that: "A lawyer shall not ... [e]ngage in conduct that is prejudicial to the administration of justice." The debates of the ABA House of Delegates clearly indicate the purpose for incorporating this "prejudicial to the administration of justice" language from past rules, such as our former DR 1-102(A)(5), into the ABA's Model Rules of Professional Conduct was "to address violations of well-understood norms and conventions of practice only." 2 *The Law of Lawyering* § 65.6, at 65-16. We have adopted the ABA's proposed model rule 8.4(d) as our rule 32:8.4(d). Examples of conduct prejudicial to the administration of justice include paying an adverse expert witness for information regarding an opponent's case preparation, demanding a release in a civil action as a condition of dismissing criminal charges, and knowingly making false or reckless charges against a judicial officer. *See id.* at 65-16 to 65-18; *see also Iowa Supreme Ct. Att'y Disciplinary Bd. v. Weaver*, 750 N.W.2d 71, 90-91 (Iowa 2008) (holding falsely accusing a judge of being dishonest concerning a sentencing decision was conduct prejudicial to the administration of justice).

We have interpreted our former DR 1-102(A)(5) in a similar fashion. In *Iowa Supreme Court Attorney Disciplinary Board v. Howe*, we stated:

Although “there is no typical form of conduct that prejudices the administration of justice,” actions that have commonly been held to violate this disciplinary rule have hampered “the efficient and proper operation of the courts or of ancillary systems upon which the courts rely.”

*Iowa Supreme Ct. Att’y Disciplinary Bd. v. Howe*, 706 N.W.2d 360, 373 (Iowa 2005) (quoting *Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Steffes*, 588 N.W.2d 121, 123 (Iowa 1999)).

In the past, we have found the mere fact a lawyer was convicted of an OWI, third offense, was conduct prejudicial to the administration of justice. *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Johnson*, 774 N.W.2d 496, 498-99 (Iowa 2009) (finding a lawyer's third OWI conviction was a violation of rule 32:8.4(d)); *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Dull*, 713 N.W.2d 199, 204 (Iowa 2006) (finding a lawyer's third OWI conviction was a violation of DR 1-102(A)(5)). We now believe, under rule 32:8.4(d), the mere act of committing a crime does not constitute a violation of this rule because the rule does not simply prohibit the doing of an act. Rather, rule 32:8.4(d) specifically prohibits an act that is prejudicial to the administration of justice by violating the well-understood norms and conventions of the practice of law. To hold otherwise would be contrary to the intent of the \*769 ABA's Model Rules of Professional Conduct when it proposed the model rule, which we adopted in rule 32:8.4(d) without change. Therefore, we overrule our prior cases holding otherwise. Nevertheless, criminal conduct may violate other rules contained in our rules of professional conduct. See, e.g., *Johnson*, 774 N.W.2d at 499 (finding a lawyer's third OWI conviction was a violation of the rule providing it is professional misconduct to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); *Dull*, 713 N.W.2d at 204 (finding a lawyer's third OWI conviction was a violation of the rule providing a lawyer shall not engage in conduct that adversely reflects on a lawyer's fitness to practice law).

Applying these principles to this record, there is nothing in the record to indicate Templeton's criminal conduct was prejudicial to the administration of justice by deviating from the well-understood norms and conventions of practice. Templeton complied with every order and time deadline in his criminal proceeding. See *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Curtis*, 749 N.W.2d 694, 699 (Iowa 2008) (holding failure to meet appellate deadlines in a postconviction relief

action was conduct prejudicial to the administration of justice). He did nothing to impede the progress of his criminal proceeding and did not make any statements falsely impugning the integrity of the judicial system. Without any evidence showing Templeton's criminal conduct violated the well-understood norms and conventions of practice, the board did not prove a violation of rule 32:8.4(d). Consequently, the board has failed to prove Templeton's conduct violated rule 32:8.4(d).

The commission also found Templeton violated rule 32:8.4(a) providing: “It is professional misconduct for a lawyer to ... violate ... the Iowa Rules of Professional Conduct...” Iowa R. Prof’l Conduct 32:8.4(a). It is true Templeton's violation of rule 35:8.4(b) violates the provision contained in rule 32:8.4(a) stating that it is professional misconduct for a lawyer to violate the Iowa Rules of Professional Conduct. The purpose, however, of including rule 32:8.4(a) in the Iowa Rules of Professional Conduct is to give notice to attorneys that they are subject to discipline for violating the rules. Iowa R. Prof’l Conduct 32:8.4, cmt. 1. The purpose of rule 32:8.4(a) was not to create a separate violation. Therefore, once the board proves a violation of the Iowa Rules of Professional Conduct, we will not discipline an attorney for violating rule 32:8.4(a). Accordingly, although we find Templeton's conduct violated rule 32:8.4(a), we will not consider it as a separate violation for purposes of determining his sanction. In the future, the board need not file a complaint alleging a violation of rule 32:8.4(a) providing it is professional misconduct for a lawyer to violate the Iowa Rules of Professional Conduct. Proof of a violation of another rule is sufficient for us to consider the proper sanction.

#### IV. Sanction.

We have no standard sanction for misconduct of this type. *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Carpenter*, 781 N.W.2d 263, 270 (Iowa 2010). Nevertheless, we try to achieve consistency with our prior cases when determining the proper sanction. *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Marzen*, 779 N.W.2d 757, 767 (Iowa 2010). In determining the proper sanction

“we consider the nature of the violations, protection of the public, deterrence of similar misconduct by others, the lawyer's fitness to practice, and the court's duty to

uphold the integrity of the profession in the eyes of the public. We \*770 also consider aggravating and mitigating circumstances present in the disciplinary action.”

*Iowa Supreme Ct. Att’y Disciplinary Bd. v. Powell*, 726 N.W.2d 397, 408 (Iowa 2007) (internal quotation marks and alteration omitted) (quoting *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Iversen*, 723 N.W.2d 806, 810 (Iowa 2006)). The goal of our disciplinary system is “to maintain public confidence in the legal profession as well as to provide a policing mechanism for poor lawyering.” *Id.* (internal quotation marks omitted).

There are a number of aggravating circumstances in this case. First, we cannot overlook the serious, egregious, and persistent nature of Templeton's misconduct and the effect it had on his victims. *See, e.g., Comm. on Prof'l Ethics & Conduct v. Tompkins*, 415 N.W.2d 620, 623 (Iowa 1987) (stating, “the more egregious and persistent the conduct, the more debased the character of the offender”). From March through June 2007, Templeton visited the women's house and looked through their bedroom and bathroom windows on multiple occasions. Templeton's victims did not know if or when he would return, whether his conduct would escalate to violence, or if they were safe in or outside their home. The victims were terrified and one roommate quit her internship, moved out of the house, and refused to participate in any criminal proceedings just to escape Templeton's harassment.

Second, Templeton has admitted to a long history of compulsive and deviant sexual behavior. *See, e.g., Tompkins*, 415 N.W.2d at 623 (refusing to allow the compulsiveness of an attorney's illness to serve as a mitigating factor); *Comm. on Prof'l Ethics & Conduct v. Vesole*, 400 N.W.2d 591, 593 (Iowa 1987) (considering an attorney's history of morally reprehensible and compulsive acts when determining an appropriate sanction). Templeton admitted he has struggled with compulsive sexual behavior his whole life. He has admitted an addiction to pornography, together with a history of exposing himself and window peeping.

Third, Templeton was well aware of what he was doing, understood he could seek help for his problems, but chose not to do so until he was caught and confronted with the consequences of his actions. *See Tompkins*, 415 N.W.2d at 623 (considering the fact that an attorney knew he could get help

for his problem but chose not to do so until faced with serious consequences when determining an appropriate sanction). In fact, when first confronted by the detective, Templeton was relieved and admitted his window peeping probably would not have stopped absent an intervention.

In addition to the aggravating circumstances, there are a number of mitigating circumstances present. Templeton's sex-offender-treatment specialist diagnosed Templeton with major depressive disorder, anxiety disorder, voyeurism, and exhibitionism for which he takes numerous prescription medications. “While illnesses do not excuse misconduct, they can be mitigating factors and can influence our approach to discipline.” *Hoglan*, 781 N.W.2d at 287.

Additionally, Templeton continues to receive treatment for his disorders and illnesses. Templeton has complied with his treatment and his performance has met expectations. Templeton's risk of recidivism is relatively low and if he continues his treatment he may be able to continue to practice law. Moreover, Templeton has voluntarily chosen to continue to wear his monitoring ankle bracelet to ensure he complies with his probation. Thus, it appears Templeton is taking affirmative steps to rehabilitate himself and change his destructive behavior. Finally, Templeton \*771 has claimed responsibility and shown remorse for his conduct.

A review of prior cases involving sexual misconduct and/or other criminal convictions reveal that the length of the suspension varies from two months to three years based on the circumstances of the case. *See, e.g., Iowa Supreme Ct. Att’y Disciplinary Bd. v. Blazek*, 739 N.W.2d 67, 70 (Iowa 2007) (revoking attorney's license due to enticement of a minor for sex and child pornography felony convictions); *Iversen*, 723 N.W.2d at 812 (suspending attorney's license for one year due to fraudulent practice felony and aggravated misdemeanor convictions); *Mulford*, 625 N.W.2d at 685-86 (citing cases imposing sanctions ranging from a public reprimand to a two-year suspension for misconduct resulting from criminal conduct); *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Thompson*, 595 N.W.2d 132, 136 (Iowa 1999) (suspending attorney's license for two months due to his convictions for two simple misdemeanors); *Steffes*, 588 N.W.2d at 125 (citing cases suspending attorneys' licenses for three months to three years for sexual misconduct); *Comm. on Prof'l Ethics & Conduct v. Barrer*, 495 N.W.2d 756, 760 (Iowa 1993) (suspending attorney's license for two years for making sexually obscene phone calls to teenage boys); *Tompkins*, 415 N.W.2d at 624 (suspending attorney's license for two years



due to conviction for trespass in relation to attorney's unlawful entry into homes to search for women's undergarments); *Vesole*, 400 N.W.2d at 593 (suspending attorney's license for three years due to repeated convictions for indecent exposure); *Comm. on Prof'l Ethics & Conduct v. Floy*, 334 N.W.2d 739, 740 (Iowa 1983) (suspending attorney's license for eighteen months due to his conviction of telephone harassment in relation to sexually obscene phone calls made to young women).

Considering the nature of Templeton's violations, the protection of the public, deterrence of similar misconduct by others, Templeton's fitness to practice, our duty to uphold the integrity of the profession in the eyes of the public, aggravating circumstances, mitigating circumstances, and the sanctions we have given in similar cases, the appropriate sanction for Templeton's conduct is to suspend his license to practice law indefinitely with no possibility of reinstatement for three months. Prior to any application for reinstatement, Templeton must provide this court with an evaluation by a licensed health care professional verifying his fitness to practice law.

#### **V. Disposition.**

We suspend Templeton's license to practice law in this state indefinitely with no possibility of reinstatement for three months. This suspension applies to all facets of the practice of law. *See* Iowa Ct. R. 35.12(3). Prior to any application for reinstatement, Templeton must provide this court with an evaluation by a licensed health care professional verifying his fitness to practice law. Upon any application for reinstatement, Templeton must establish that he has not practiced law during the suspension period and has complied in all ways with the requirements of Iowa Court Rule 35.13. Templeton shall also comply with the notification requirements of Iowa Court Rule 35.22. We tax the costs of this action to Templeton pursuant to Iowa Court Rule 35.26.

#### **LICENSE SUSPENDED.**

#### **All Citations**

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#### **Footnotes**

- 1 We have changed the names of the three women pursuant to Iowa Court Rule 21.28 in order to keep their identities confidential.

